

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Judith Le	Team: Squad #8	CCRB Case #: 201703268	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 04/24/2017 5:00 PM	Location of Incident: 3530 White Plains Road (corner of White Plains Road and East 211th Street)	Precinct: 47	18 Mo. SOL 10/24/2018	EO SOL 10/24/2018	
Date/Time CV Reported Thu, 04/27/2017 1:46 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 04/27/2017 1:46 PM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Lennin Badia	19794	958281	047 PCT
2. POM Jesus Ramos	13395	956189	047 PCT
3. POM Rafael Rispoli	12456	956201	047 PCT
4. POM Jared Faber	07590	956630	047 PCT
5. POM Cody Petrucci	12902	956165	047 PCT
6. POM Matthew Disilvestre	15513	960466	047 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Michael Rodriguez	07280	957096	047 PCT
2. SGT Thomas Gross	03547	947050	047 PCT
3. POF Brigette Medina	31628	956083	047 PCT
4. POM Jeffrey Reisenauer	13405	956195	047 PCT
5. POM Fatmir Vucetovic	559	955644	047 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Jesus Ramos	Force: Police Officer Jesus Ramos used physical force against § 87(2)(b)	
B.POM Lennin Badia	Force: Police Officer Lennin Badia used physical force against § 87(2)(b)	
C.POM Rafael Rispoli	Force: Police Officer Rafael Rispoli used physical force against § 87(2)(b)	
D.POM Cody Petrucci	Force: Police Officer Cody Petrucci used physical force against § 87(2)(b)	
E.POM Jared Faber	Force: Police Officer Jared Faber used physical force against § 87(2)(b)	
F.POM Matthew Disilvestre	Force: Police Officer Matthew Disilvestre used physical force against § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
G.POM Jesus Ramos	Force: Police Officer Jesus Ramos tased § 87(2)(b) § 87(2)(b) .	
H.POM Rafael Rispoli	Discourtesy: Police Officer Rafael Rispoli spoke discourteously to § 87(2)(b)	
I.POM Rafael Rispoli	Force: Police Officer Rafael Rispoli used physical force against § 87(2)(b)	
J.POM Jesus Ramos	Abuse: Police Officer Jesus Ramos threatened § 87(2)(b) § 87(2)(b) with the use of force.	

Case Summary

On the morning of April 27, 2017, § 87(2)(b) and § 87(2)(b) got into a fight at the corner of East 211th Street and White Plains Road in the Bronx. Afterwards, § 87(2)(b) filed a complaint against § 87(2)(b) with PO Jesus Ramos and PO Lennin Badia of the 47th Precinct. At 5:52 p.m., § 87(2)(b) called 911 to report that § 87(2)(b) was sitting in front of MetroPCS at 3530 White Plains Road in the Bronx. PO Ramos and PO Badia again responded, with backing from PO Rafael Rispoli and PO Cody Petrucci of the 47nd Precinct. § 87(2)(b) positively identified § 87(2)(b) and PO Ramos informed § 87(2)(b) that he was under arrest. § 87(2)(b) refused to comply and a struggle ensued. Shortly thereafter, PO Matthew DiSilvestre and PO Jared Faber of the 47th Precinct also arrived. The officers subsequently used force on § 87(2)(b) to try to get him into handcuffs (**Allegations A, B, C, D, E and F**). PO Ramos also Tased § 87(2)(b) at least two times (**Allegation G**).

After § 87(2)(b) was handcuffed, he was placed in a van. § 87(2)(b) owner of MetroPCS, who had been videotaping the incident, ran towards the van to continue taping. PO Rispoli told § 87(2)(b) to, “Get the fuck out the way,” (**Allegation H**) and pushed § 87(2)(b) back with his arm (**Allegation I**). § 87(2)(b) then began heckling the officers, calling them rookies. In response, PO Ramos turned and walked up to § 87(2)(b) in a threatening manner (**Allegation J**). He was held back by PO Badia, and then turned and left.

Video footage was provided from the cellphones of both § 87(2)(b) (see Board Review #1) and an anonymous source (see Board Review #2), who asked § 87(2)(b) to submit the video footage on their behalf. Both § 87(2)(b) and § 87(2)(b) footage captured the incident about midway, once § 87(2)(b) was on the ground, until the officers left the scene. Both videos contained sound, but no time-stamp. Additional footage was provided by the security cameras at MetroPCS (see Board Review #3), located at 3530 White Plains Road in the Bronx. The video footage was dated April 24, 2017 and time-stamped from 5:45 p.m. to 6:14 p.m. It did not contain audio or any footage showing § 87(2)(b) interacting with the police.

This case exceeded the 90-day threshold on July 27, 2017 due to difficulty scheduling officers.

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation due to injuries sustained by § 87(2)(b)
- § 87(2)(b) § 87(2)(c)

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- A BADS search revealed that § 87(2)(b) has no prior criminal convictions (see Board Review #6).
- As of September 14, 2017, a Notice of Claim has not been filed with the Office of the Comptroller by § 87(2)(b) (see Board Review #7).
- As of September 14, 2017, a Notice of Claim has not been filed with the Office of the Comptroller by § 87(2)(b) (see Board Review #8).

Civilian and Officer CCRB Histories

- PO Ramos has been a Member of Service for 3 years and has not been a subject in any previous CCRB complaints (see Board Review #9).
- PO Rispoli has been a Member of Service for 3 years and has not been a subject in any previous CCRB complaints (see Board Review #10).
- PO Badia has been a Member of Service for 2 years and has not been a subject in any previous CCRB complaints (see Board Review #11).
- PO Petrucci has been a Member of Service for 3 years and has not been a subject in any previous CCRB complaints (see Board Review #12).
- PO Faber has been a Member of Service for 3 years and has been a subject in 1 other complaint, totaling 2 allegations, § 87(2)(g) (see Board Review #13).
- PO DiSilvestre has been a Member of Service for 1 year and has not been a subject in any previous CCRB complaints (see Board Review #14).
- This is § 87(2)(b)'s first CCRB complaint (see Board Review #15).
- This § 87(2)(b)'s first CCRB complaint (see Board Review #16).
- § 87(2)(b) has filed one previous complaint with the CCRB, § 87(2)(b)

Allegations Not Pleaded

§ 87(2)(b) alleged that after § 87(2)(b) was taken to the ground, although he could not see everything because the officers were surrounding him, officers placed their knee on § 87(2)(b)

§ 87(2)(b)'s neck. In contrast, PO Ramos, PO Rispoli, PO Badia, PO Petrucci, and PO DiSilvestre stated that at no point was pressure placed on § 87(2)(b)'s neck. During his testimony, § 87(2)(b) did not make any statements regarding pressure placed on his neck or difficulty breathing. § 87(2)(g)

Potential Issues

PO Faber was unable to provide a statement because he was out on special assignment until September 13, 2017. § 87(2)(g)

Findings and Recommendations

Allegation A - Force: Police Officer Jesus Ramos used physical force against § 87(2)(b)

Allegation B - Force: Police Officer Lennin Badia used physical force against § 87(2)(b)

Allegation C - Force: Police Officer Rafael Rispoli used physical force against § 87(2)(b)

Allegation D - Force: Police Officer Cody Petrucci used physical force against § 87(2)(b)

Allegation E - Force: Police Officer Jared Faber used physical force against § 87(2)(b)

Allegation F - Force: Police Officer Matthew DiSilvestre used physical force against § 87(2)(b)

Allegation G - Force: Police Officer Jesus Ramos Tased § 87(2)(b)

It is undisputed that officers attempted to place § 87(2)(b) under arrest for the assault of § 87(2)(b) in front of MetroPCS located at 3530 White Plains Road in the Bronx. § 87(2)(g)

NYPD Complaint #§ 87(2)(b) reported on April 24, 2017 at 4:15 p.m. states, complainant, § 87(2)(b) states he got into a verbal dispute with defendant, § 87(2)(b) over a parking spot when defendant struck him in the face with closed fists causing substantial pain to the right side of face (see Board Review #18).



snagit_force§ 87(2)(b).mp4

In the clip of the video footage provided by § 87(2)(b)'s cell phone (see Board Review #19), at <0:00> the video depicts five male officers, identified through investigation as PO Ramos, PO Badia, PO Rispoli, PO DiSilvestre and PO Faber kneeling in a circle over a civilian, identified through investigation as § 87(2)(b)'s right leg is the only body part visible through the group of officers and does not appear to move. At <0:03> a light-skinned officer identified as PO Ramos picks up a Taser with his right hand and the audio picks up the sound of a Taser deploying. Shortly thereafter, PO Rispoli yells "Fuck!" while forcefully falling backward. § 87(2)(b)'s leg lifts up. Between <0:10> and <0:12> the elbow of PO DiSilvestre, who is farthest away from the camera, can be seen making four quick jabs in a downward motion. At <00:14> PO Ramos again picks up the Taser with his right hand. At <00:19> PO Reisenhauer instructs the crowd to get back on the curb. At <00:22>, an officer points his arm and instructs

§ 87(2)(b) to take a video from “over there.” At <00:23> PO Ramos puts down the Taser and pulls out his handcuffs from his right hip. The other officers are still on top of § 87(2)(b). At <00:36> it appears that the officers are handcuffing § 87(2)(b). At <0:50> PO Badia stands up, making visible § 87(2)(b) whose hands are cuffed behind his back. At <00:58>, he is pulled up by his jacket by PO Faber and PO DiSilvestre, who begin to escort him into the street. During this time, the officers do not appear to kick, knee or punch § 87(2)(b).



snagit_DiSilvestre.mp4

In the clip of the video footage provided anonymously (see Board Review #20), at <0:03> the camera zooms in, and at <0:08> a white officer with short dark hair, identified through investigation as PO DiSilvestre, makes four quick jabbing motions with his right arm. At <0:11> a voice is heard saying “He’s punching him in the face, what’s up with him?”

The PreHospital Care Report Summary provided by FDNY on April 24, 2017 (see Board Review # 21) stated that § 87(2)(b) had some abrasions on his face, but no other complaints. He stated that he was being placed under arrest and got aggressive. EMS found § 87(2)(b) negative for visible deformities, bruising, or discoloration. On § 87(2)(b) § 87(2)(b) received treatment from the § 87(2)(b) (see Board Review #21). § 87(2)(b) complained of wrist pain after getting into a scuffle with the NYPD while being arrested. He stated that he resisted arrest, at which point officers on scene punched, kicked and restrained him. He believed that he was stepped on when he was arrested. He said that 9 police officers were on top of him and he hit his head on the ground. He complained of shooting and severe pain to his right elbow and pain and swelling to the right wrist. X-rays were conducted on § 87(2)(b)’s wrist. He was found to have a right distal radius fracture.

§ 87(2)(b) (see Board Review #22) testified that on April 24, 2017 at 9:00 a.m., he got into a fight with § 87(2)(b) who he has known for many years. Afterwards § 87(2)(b) went home. At 5:00 p.m., § 87(2)(b) went back out and was sitting by himself in front of the MetroPCS when he saw two police cars pull up. PO Ramos, whose name § 87(2)(b) obtained from his badge, approached him with his partner, and asked him if he had gotten into a confrontation earlier that day with § 87(2)(b). § 87(2)(b) replied that he knew § 87(2)(b) and PO Ramos told him that § 87(2)(b) had filed a complaint against him for assault. § 87(2)(b) tried to explain to that he hadn’t assaulted § 87(2)(b) but had instead fought with him, “like two men.” PO Ramos informed § 87(2)(b) that when someone filed a complaint, the officers had to see it through. He told § 87(2)(b) that he was under arrest and the officers needed to take him in. § 87(2)(b) replied that PO Ramos couldn’t be serious about arresting him.

§ 87(2)(b) stated that at the time, § 87(2)(b) was across the street, and he told the officers, “Yo, you’re not handcuffing me,” because he wanted to speak to § 87(2)(b) and have him explain that they knew each other and were just fighting. PO Ramos tried to handcuff § 87(2)(b) and § 87(2)(b) snatched back his arm and pulled it to his side. PO Ramos’ partner then came over with about seven uniformed cops. § 87(2)(b) was still standing in front of the fire hydrant and the officers grabbed him by his arms. § 87(2)(b) was asking them what they

were doing. He was trying to prevent the officers from handcuffing him by moving and wiggling his body and trying to use the officers' strength against them. The next thing he knew, one of the officers did something to his leg and threw him off his feet. The left side of § 87(2)(b)'s face hit the ground. He was still asking the officers what they were doing and wiggling his body. He heard someone say, "If you don't stop moving, I'm going to Tase you." § 87(2)(b) said he was trying to relax, but his body was still wiggling and the officers were moving his body to try to get his hands behind his back. The next thing he knew, he was Tased and his body shook from the pulse. § 87(2)(b) screamed and asked the officers what they were doing. § 87(2)(b) was then Tased again and continued to scream. After the officers Tased him a third time, § 87(2)(b) forced his body to relax and he went limp. The officers then handcuffed him. Even though § 87(2)(b) was handcuffed, the officers kept kicking his right arm and he was kned in the back more than three times. An officer, but he did not know who, was stomping on his back with their right leg. He could hear bystanders shouting and asking if they were trying to kill him. After that, the officers threw him in the car and they left.

§ 87(2)(b) (see Board Review #23) stated that he was working at his booth on the corner of East 211th Street and White Plains Road when he saw § 87(2)(b) a long-time friend, around 2:00 or 3:00 p.m. § 87(2)(b) told § 87(2)(b) that he had just gotten into an incident with someone named § 87(2)(b) and needed to go home and calm down. § 87(2)(b) then left, but at about 5:00 p.m., § 87(2)(b) saw him across the street from his booth in front of the MetroPCS. Shortly thereafter, he saw two officers approach § 87(2)(b). At that time, a man he believed was § 87(2)(b) also came up to the corner where § 87(2)(b) was standing and said, "Yo, that's him right there." § 87(2)(b) thought § 87(2)(b) must have been with the police, because right after he said that, three uniformed officers got out of a van. About five officers spoke to § 87(2)(b) and they asked him to turn around and put his hands behind his back. § 87(2)(b) did not comply and asked the officers what this was for. § 87(2)(b) was standing against a wall and the officers stood around him. Four or five officers reached into § 87(2)(b)'s pockets and converged on him. Two or three officers grabbed § 87(2)(b) on his upper body and threw him against the wall. They then twisted his upper body and threw him face-first into the ground. From across the street, § 87(2)(b) could hear the officers instructing § 87(2)(b) to stop resisting. § 87(2)(b) replied that he was not resisting. § 87(2)(b) stated that from where he was standing, he could see that § 87(2)(b) was not resisting and officers had already subdued him. § 87(2)(b) later noted, however, that once § 87(2)(b) was on the ground, he could not see everything because all of the officers were surrounding him. He did not know if § 87(2)(b) was handcuffed.

§ 87(2)(b) stated that § 87(2)(b)'s face was facing the ground, and an officer that had his back to § 87(2)(b) made a kicking motion towards § 87(2)(b)'s head. He believed that it made impact because § 87(2)(b) was later bleeding on the right-side of his forehead. An officer had a knee on § 87(2)(b)'s back and another officer had his knee on § 87(2)(b)'s neck. There were a few officers repeatedly punching § 87(2)(b). The officers were trying to get § 87(2)(b)'s hands behind his back by grabbing his arm and pulling it to his back. § 87(2)(b) was asking the officers why they were trying to break his arm. Once § 87(2)(b) was subdued and handcuffed, § 87(2)(b) saw an officer come out and make a kicking motion towards § 87(2)(b). While § 87(2)(b) was still on the ground, an unidentified officer then began

making an upper cut motion against § 87(2)(b)'s body. § 87(2)(b) did not think this was correct because § 87(2)(b) was already in handcuffs.

§ 87(2)(b) (see Board Review #24), is the owner of MetroPCS located at 3530 White Plains Road in the Bronx. § 87(2)(b) noted that he was familiar with § 87(2)(b) and that he saw § 87(2)(b) and § 87(2)(b) speak every day in front of MetroPCS. He stated that at 5:00 p.m., he saw § 87(2)(b) and § 87(2)(b) get into a physical fight in front of the Chase Bank across the street from MetroPCS. At 5:45 p.m., § 87(2)(b) saw two marked vehicles with four officers arrive and he came out and stood by the MetroPCS entrance to hear what was going on. Two officers got out and spoke to § 87(2)(b) who said that § 87(2)(b) had punched him in the face. Two other officers, including PO Ramos, who § 87(2)(b) identified from his video footage, approached § 87(2)(b) and asked him what had happened. As § 87(2)(b) was telling the officers that he and § 87(2)(b) had just been arguing, PO Ramos informed him that they needed to take him in for questioning because § 87(2)(b) wanted to press charges against him.

PO Ramos then told § 87(2)(b) to shut up and put his hands behind his back. § 87(2)(b) asked if he could speak to § 87(2)(b) but PO Ramos did not let him and again told him that they had to take him in. PO Ramos and his partner then grabbed § 87(2)(b) by his jacket's right arm, twisted him around and placed him against a vehicle parked next to the sidewalk. § 87(2)(b)'s face was pressed against the car and PO Ramos was holding § 87(2)(b)'s back against the car. As this was going on, § 87(2)(b) and § 87(2)(b) were yelling at each other and § 87(2)(b) was moving his body. § 87(2)(b) thought that the officers might have interpreted § 87(2)(b)'s movements as resisting, but § 87(2)(b) stated that § 87(2)(b) was just speaking aggressively and moving his shoulder towards § 87(2)(b). As § 87(2)(b) and § 87(2)(b) were going back and forth, PO Ramos slammed § 87(2)(b) against the car. Three or four officers then came and grabbed his arms and put him in handcuffs. The handcuffs were securely locked on both of his wrists.

Twenty seconds after he was handcuffed, PO Ramos, who was standing about two feet away, shot a Taser into § 87(2)(b)'s back. § 87(2)(b) saw string come out. Additional officers arrived on scene. § 87(2)(b) thought there were about thirty officers in total. After § 87(2)(b) was Tased, two or three officers took him and dragged him by his arms to the ground. § 87(2)(b) fell face first onto the ground. He was screaming and the officers were on top of him. § 87(2)(b) could not hear exactly what was being said. § 87(2)(b) stated he was looking directly at § 87(2)(b) and could not see him moving his body. He did note, however, that because the officers were piled on top of him, he couldn't really see what they were doing. He kept hearing the Taser go off. § 87(2)(b) saw an officer, who he identified from his video as PO Rispoli, punching § 87(2)(b) in the right-side of his head. He didn't see any of the officers do anything with his knees. The officers then lifted § 87(2)(b) and placed him inside their car.

Threat, Resistance or Injury (T.R.I.) Incident Worksheet # § 87(2)(b) (see Board Review #25) states that PO Ramos used a conducted electrical weapon (CEW) to overcome resistance or aggression. It states that the CEW was used at approximately 3 feet. Both darts missed and did not penetrate the skin. After the CEW used, the subject continued to show increased resistance.

PO Ramos (see Board Review #26) testified that at 4:43 p.m., he and PO Badia received a call for harassment at East 211th Street and White Plains Road. When they arrived, they met with § 87(2)(b) who told him that he had been punched by § 87(2)(b) who was no longer on scene. The officers took a report for assault and resumed patrol. A few hours later, the officers received a second call from § 87(2)(b) stating that § 87(2)(b) had returned. When PO Ramos and PO Badia arrived on scene, they saw PO Rispoli, PO Petrucci and § 87(2)(b). PO Ramos approached § 87(2)(b) while PO Badia went to speak to § 87(2)(b). PO Ramos asked § 87(2)(b) if he had been involved in an altercation earlier that day and he replied that he had not. § 87(2)(b) then saw § 87(2)(b) and PO Ramos again asked if they got into an altercation. § 87(2)(b) replied in the affirmative. PO Badia then came over and told PO Ramos that § 87(2)(b) had positively identified § 87(2)(b). PO Ramos noted that as soon as § 87(2)(b) was positively identified, he was under arrest.

PO Ramos told § 87(2)(b) that he needed to go with them to the stationhouse and asked him not to resist. PO Ramos and PO Badia then tried to place § 87(2)(b) under arrest, but he resisted. § 87(2)(b) told the officers he wouldn't go with them. PO Ramos again asked § 87(2)(b) not to resist. During this time, PO Badia was able to put one of § 87(2)(b)'s hands behind his back and handcuff one of his hands. § 87(2)(b) then got up from the fire hydrant where he was sitting and started flailing his arms and throwing his elbows. PO Badia was holding onto § 87(2)(b)'s hand that was handcuffed, and PO Ramos was holding onto his other arm and wrist. § 87(2)(b) was trying to get away from the officers, and PO Ramos kept instructing him not to resist. PO Ramos went to hold § 87(2)(b) and they began tussling in the back of a vehicle that was there. All the officers were trying to get his hands behind his back. § 87(2)(b) had been resisting for about seven seconds when PO Ramos decided to deploy the Taser. He noted that while he had previously received Taser training, this was the first time he used his Taser. PO Ramos stepped back, yelled, "Taser," three times and deployed his Taser because § 87(2)(b) was still resisting. The Taser was not effective—though PO Ramos stated that he did not realize this until later. One prong became stuck to § 87(2)(b)'s jacket and another prong fell off and hung there. § 87(2)(b) did not respond to being Tased and kept resisting.

PO Ramos, PO Badia and two other officers then brought § 87(2)(b) to the ground. § 87(2)(b) was still resisting and refusing to give up his hands. PO Ramos had § 87(2)(b)'s arm in one hand and his Taser in his other hand. PO Ramos deployed his Taser again and used one, five-second cycle. Once he saw that it was ineffective, he put his Taser down. The officers were trying to get § 87(2)(b)'s hands behind his back by twisting his wrists. PO Ramos did not make any other contact with § 87(2)(b)'s body or punch him in the head. PO Ramos did not see anyone else punching or kicking § 87(2)(b). § 87(2)(b) was then handcuffed and stopped resisting. No additional physical contact was made, and no officers, including PO Ramos, kicked, kneed or stomped on him. § 87(2)(b) was then placed in the RMP.

PO Badia (see Board Review #27) provided testimony consistent with PO Ramos. PO Badia stated that after handcuffing § 87(2)(b)'s right hand, § 87(2)(b) immediately began flailing his body and twisting his torso, elbowing the officers. PO Ramos called for backup and additional officers arrived. The officers kept telling § 87(2)(b) to stop resisting and after

wrestling for a few minutes, PO Ramos deployed the Taser once. After § 87(2)(b) did not respond to the Taser, the officers ended up on the ground where § 87(2)(b) continued to refuse to comply. He pressed his body against his left arm and kept telling the officers that it was “bullshit” that they were arresting him for no reason. PO Badia had § 87(2)(b)'s right arm, and someone ended up grabbing his left arm, and they cuffed his hands together. After § 87(2)(b) was handcuffed, force was no longer required. PO Badia noted that although § 87(2)(b) was still swinging his torso, the officers did not physically restrain him since he was already handcuffed.

PO Rispoli (see Board Review #28) stated that upon arriving at the location, he and PO Petrucci saw PO Ramos and PO Badia trying to speak with § 87(2)(b) who was yelling at someone across the street, about twelve feet away. PO Ramos and PO Badia were trying to arrest § 87(2)(b) who was pulling his arms away. PO Rispoli noted that after § 87(2)(b) was Tased, he did not know how § 87(2)(b) was brought down, but stated that as he fell, PO Rispoli was struck on top of his nose. § 87(2)(b) was clenching his arms in front of his body by his chest, and pulling his wrists in front of him. PO Rispoli was able to pull out one of his wrists, but PO Rispoli got shocked from the current of a second Taser discharge. PO Rispoli had not heard any warning that the Taser was being discharged because of all the commotion. After PO Rispoli recovered, he saw that § 87(2)(b) had put his arm back under his body. PO Rispoli grabbed § 87(2)(b)'s arm again and was shocked a second time. Shortly thereafter, the officers were able to pull § 87(2)(b)'s arms out and handcuff him. PO Rispoli noted that during this time, he did not punch § 87(2)(b) in the head, kick him, or knee him. Once § 87(2)(b) was placed in handcuffs, he was picked up from the ground and no additional force was used.

PO Petrucci (see Board Review #29) stated that he and PO Rispoli were trying to find out if § 87(2)(b) needed an ambulance, when he heard PO Badia and PO Ramos across the street tell § 87(2)(b) to put his hands behind his back. § 87(2)(b) was resisting and kept straightening his arm and lifting it up and he went to assist. The officers struggled with § 87(2)(b) for a while before PO Ramos told him that he would be Tased if he did not comply. PO Ramos then Tased § 87(2)(b) and afterwards, he was immediately brought to the ground. § 87(2)(b) continued to refuse to give his arms and was swinging them at the officers. PO Petrucci heard other officers tell § 87(2)(b) to put his hands behind his back. PO Petrucci stated that a crowd was forming, and PO Petrucci felt someone behind him, so he got up and conducted crowd control. He instructed people to keep back. After § 87(2)(b) was handcuffed, the officers left the scene.

When PO DiSilvestre (see Board Review #30) arrived, PO Rispoli, PO Ramos, PO Petrucci and PO Badia were on scene, struggling with § 87(2)(b) who was actively resisting arrest. § 87(2)(b) was flailing his arms and moving his entire body. PO Ramos instructed § 87(2)(b) multiple times to comply or get Tased, but he refused to listen and was subsequently Tased. After he was Tased, § 87(2)(b) continued to resist by flailing his arms. PO DiSilvestre and PO Faber, who had previously been standing back, ran up and each grabbed one of § 87(2)(b)'s shoulders and pulled him to the ground in what PO DiSilvestre characterized as a normal takedown. § 87(2)(b) was lying flat on the ground and continuing to actively resist arrest by holding his arms underneath his chest. The officers told § 87(2)(b) to give them his arms and stop resisting. As he was actively resisting, PO DiSilvestre used two or three hand strikes to strike

the side of § 87(2)(b)'s head. He did not come near § 87(2)(b)'s neck. PO DiSilvestre explained that he struck § 87(2)(b)'s head because he was actively resisting, and it was the least amount of force necessary to effect arrest. He stated that no other officers struck § 87(2)(b). Neither PO DiSilvestre nor the officers kned § 87(2)(b) in the back or kicked him in the arm. After struggling with § 87(2)(b) for about a minute, PO Rispoli and PO Faber finally got him into handcuffs. Once he was in handcuffs, the officers did not make any additional physical contact with him. They then put him in the cop car and drove him to the stationhouse. PO DiSilvestre viewed the video clip anonymously provided (see Board Review #20). At the <00:08> mark, he identified himself as the officer making punching motions, stating that this was when he struck § 87(2)(b)'s head.

PO Reisenauer (see Board Review #31) stated he and his partner, PO Fatmir Vucetovic of the 47th Precinct, heard a call for an assault come over the radio. When they arrived, PO Ramos and PO Badia asked PO Reisenauer to wait with § 87(2)(b) while they went across the street to talk to the complainant about the assault. After a few minutes, PO Ramos and PO Badia came back over and PO Ramos instructed § 87(2)(b) to stand and put his hands behind his back so he could be handcuffed. In response, § 87(2)(b) began to retract and lift up his hands, turn away, and put his hands in front of his body. PO Reisenauer was focused on § 87(2)(b)'s left arm, which he was holding. He did not know what the other officers were doing. § 87(2)(b) refused to comply and he was Tased. After that, he was brought down.

Patrol Guide Procedure 221-02 says that uniformed members of the service at the scene of a police incident should apply no more than reasonable force necessary to gain control (see Board Review #32). Patrol Guide Procedure 221-08 says that a Conducted Electrical Weapon (CEW) should be used against persons who are actively resisting, exhibiting active aggression, or to prevent individuals from physically injuring themselves or other persons actually present (see Board Review #33).

It is undisputed—by § 87(2)(b) his medical records, witness and officer testimony, that § 87(2)(b) actively resisted arrest. Despite numerous requests for him to comply and warnings that he would be Tased if he did not stop resisting, § 87(2)(b) admittedly refused to do so. Video footage provided by § 87(2)(b) (see Board Review #19) stands in contrast to allegations that officers continued to use force against § 87(2)(b) after he was handcuffed. At <00:23> PO Ramos pulled out his handcuffs from his right hip. At <00:36> the officers appeared to be huddled over § 87(2)(b) handcuffing him. At <0:50> PO Badia stands up, and § 87(2)(b) becomes visible. His hands are cuffed behind his back. At <00:58>, he is picked up by officers. During this time, the officers do not appear to kick, knee or punch § 87(2)(b) § 87(2)(g)

Allegation H - Discourtesy: Police Officer Rafael Rispoli spoke discourteously to § 87(2)(b)

Allegation I - Force: Police Officer Rafael Rispoli used physical force against § 87(2)(b)

It is undisputed that after § 87(2)(b) was placed in a van, § 87(2)(b) continued to videotape the officers in close proximity § 87(2)(g)



snagit_§ 87(2)(b)_rispoli.mp4

In the clip of the video footage provided by § 87(2)(b)'s cell phone (see Board Review #34) as officers take § 87(2)(b) to a marked white SUV, § 87(2)(b) who is recording, follows very closely. Shortly thereafter, an officer identified as PO Rispoli says, "Yo, get the fuck back!" and extends his left arm in a pushing motion. § 87(2)(b) is heard saying, "Who are you hitting? Why are you hitting me, bro?" PO Rispoli shouts, "Get back," and again makes the pushing motion with his arm. § 87(2)(b) again says, "Who are you hitting? Why are you hitting me? I didn't hit you." The other officers then begin instructing § 87(2)(b) to step back. An officer then tells § 87(2)(b) to step back. He complies.

§ 87(2)(b) (see Board Review #24) stated that once § 87(2)(b) was thrown to the ground, he began videotaping. § 87(2)(b) was standing approximately 2 to 3 feet away from the officers and yelling at them. § 87(2)(b) stated that many officers, including PO Rispoli, whose name he obtained from his video footage, told him to "get back" and "get the fuck back" about four times. PO Rispoli also shoved him. He told them he wasn't going to step back because he was going to record what they were doing, since it was wrong. § 87(2)(b) reviewed the video footage provided and identified PO Rispoli as the officer shoving him in the video. He stated that PO Rispoli did not instruct him to move back before pushing him.

§ 87(2)(b) (see Board Review #23) noted that a crowd had gathered and everyone was yelling at the officers and asking if they were trying to kill § 87(2)(b). There was also an older Hispanic male, identified through investigation as § 87(2)(b) speaking up and videotaping in front of the MetroPCS. A Hispanic-looking cop approached § 87(2)(b) and told him several times, "Get the fuck out of here."

PO Rispoli (see Board Review #28) stated that as he was struggling with § 87(2)(b) a crowd was gathering. There were about 30 people crowding around them. As a rule of thumb, when crowds formed, PO Rispoli told people to stay on the sidewalk. PO Rispoli and other officers were telling people from the crowd to get back. He did not recall using any profanity or telling anyone to, "Get the fuck back." PO Rispoli stated he did not make any physical contact with anyone in order to get them away from the officers. PO Rispoli explained that if someone refused to get back they might have to use force, but he did not remember having to use force against anyone. PO Rispoli reviewed the video footage provided by § 87(2)(b) and at the <1:11 mark> identified the person saying, "Get the fuck back," as possibly PO Reisenauer. After reviewing the video, PO Rispoli did not have anything else to add to the record.

PO Reisenauer (see Board Review #31) noted that after § 87(2)(b) was Tased, he and PO Vucetovic turned and conducted crowd control, as a crowd of over twelve people had formed. PO Reisenauer was trying to make sure the scene was clear and told the crowd to move back. He noted that the crowd grew more hostile and became increasingly argumentative and combative.



snagit_§ 87(2)(b)ramos1.mp4

In the clip of the video footage provided by § 87(2)(b)'s cell phone (see Board Review #37), § 87(2)(b) says "That's a fuckin' rookie. You're a fucking rookie, bro." It is unclear who he is specifically addressing. PO Ramos turns from the direction he is walking and comes toward the camera with his right arm raised and fingers pointed toward § 87(2)(b). PO Ramos says "My man, I told you not to talk to me, dawg. I told you not to talk to me." An arm, identified as belonging to PO Badia, holds PO Ramos back. At the same time § 87(2)(b) is shouting over him, "Hit me. Hit me. Go ahead." PO Ramos then turns and walks away from § 87(2)(b).



snagit_§ 87(2)(b)ramos.mp4

In the clip of the video footage anonymously provided (see Board Review #38), PO Ramos is seen near the left rear wheel of the marked SUV containing § 87(2)(b). He turns his head and looks directly at § 87(2)(b) filming with his cellphone, and walks toward him at a quick and aggressive pace. The audio depicts § 87(2)(b) saying "Go ahead! Go ahead!" PO Ramos is directly in front of him, talking loudly and pointing his right finger in his face. PO Ramos' face is approximately 6 inches from § 87(2)(b)'s face. Another officer, with a Mohawk-like haircut, identified through investigation as PO Badia, places his body between the two men, and leads PO Ramos away from § 87(2)(b).

§ 87(2)(b) (see Board Review #24) noted that after calling PO Ramos a rookie, PO Ramos moved towards him and approached him as if to hit him.

§ 87(2)(b) (see Board Review #23) said § 87(2)(b) held his phone up, told the officer he wasn't leaving and to go ahead and hit him because he had him on camera. The cop started moving towards § 87(2)(b) making a lunging motion, and then another cop came and pulled him away. The officers then put § 87(2)(b) in a van and they drove off.

PO Ramos (see Board Review #26) testified that after placing § 87(2)(b) in the RMP, he walked away because he was tired from the struggle. As he was walking, he saw § 87(2)(b) walking between the officers. PO Ramos and other officers instructed him to get back. PO Ramos did not recall himself or any other officers using profanity to instruct him to get back. PO Ramos noted that § 87(2)(b) was heckling him. He could not specifically remember what he was saying. PO Ramos stated that he did not become upset from the heckling and at no point came at § 87(2)(b) in a physically threatening manner. After viewing § 87(2)(b)'s video footage, PO Ramos stated that he recalled § 87(2)(b) calling him a rookie. He said that he did not know if the comments were directed at him, but thought § 87(2)(b) might have been focused on him because he Tased § 87(2)(b). He noted that when he turned towards him, his intent was to have § 87(2)(b) move back. PO Ramos stated that he did not feel that PO Badia came to get him as he had already turned and extracted himself from the situation.

PO Badia (see Board Review #27) testified that PO Ramos instructed § 87(2)(b) to move back. § 87(2)(b) yelled, "You're a rookie cop," at PO Ramos. PO Ramos approached § 87(2)(b).

PO Badia decided to get out of the car and approached PO Ramos and told him to get back in the RMP because they already had the defendant in the car and there were too many people around. PO Badia did not remember if he had to physically restrain Sgt. Ramos.

P.G. 221-02 states that MOS may use force to gain compliance, control, or custody of an uncooperative subject (see Board Review #32). In *New York v. Square*, 872 NYS 2d 693 (2008), the court stated that, “The mere expression that one feels aggrieved by the police—even when uttered in a loud voice—cannot constitute an offense” (see Board Review #39).

§ 87(2)(g)

[REDACTED]

Squad: 8

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date